

JURIDICAL REVIEW OF THE FORMATION OF LAWS AND REGULATIONS IN THE AGRICULTURAL SECTOR IN LAW NUMBER 6 OF 2023 CONCERNING THE STIPULATION OF GOVERNMENT REGULATIONS INSTEAD OF LAW NUMBER 2 2022 CONCERNING JOB CREATION IS ASSOCIATED WITH THE GENERAL PRINCIPLES OF GOOD GOVERNANCE.

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Abstract

Indonesia is an agricultural country with its biodiversity. As an agricultural country, Indonesia can meet the community's food needs. The state must achieve the general welfare as stipulated in the constitution. It is noted that regulations in agriculture are spread across various laws and regulations. The results showed that the establishment of the Job Creation Law was considered contrary to the general principles of good governance such as the principle of legal certainty, prudence, not abusing interests, and openness. The Job Creation Law formed using the *omnibus law* approach method is also considered less representative of the principle of expediency in terms of formal aspects. The Job Creation Law has substantially changed various main provisions of laws and regulations in agriculture. These changes have an impact on the welfare of farmers. This condition makes the Job Creation Law considered unable to achieve public welfare and does not reflect the value of legal expediency. The advice for the government is to always base on the general principles of good governance when forming laws and review the substances of regulations in agriculture so that they are more directed towards the welfare of farmers.

Keywords: juridical review; agriculture; Good Governance

1. INTRODUCTION

As we know, Indonesia is an agricultural country with much fertile land to be planted by various plants. This of course can make the Indonesian state meet the community's food needs. The state must meet food needs as mandated by the constitution, namely promoting general welfare where food is part of one of them. The law reaffirms that the state must achieve food security. The provisions of Article 1 Number 4 of Law Number 18 of 2012 concerning Food as amended by the Job Creation Law state that food security is a condition of food fulfillment for the state up to individuals, which is reflected in the availability of sufficient food, both in quantity and quality, safe, diverse, nutritious, equitable, and affordable and does not conflict with religion, belief, and community culture, to be able to live healthy, active, and productive lives sustainably. It can be said that food security is the key so that people can survive as food is a primary need.

Agriculture is one of the fields with a wide scope in management. Agriculture is closely related to spatial planning issues, land use, seeds and breeding, planting, water utilization, harvesting and post-harvest, to the role of farmers. These aspects can determine the quality or quality of the food produced. These aspects can be fulfilled if it has a strong regulatory foundation. The people can entrust this matter to the state to solve. This is because the state has carried out agreements given by society that want to give its rights to the state to achieve common goals as stated by the social contract theory [1]. With this the state has the right to control society.

It is noted that regulations governing agriculture are scattered in various laws and regulations such as: Law Number 18 of 2012 concerning Food; Law Number 13 of 2010 concerning Horticulture; Law Number 38 of 2014 concerning Plantations; Law on the Protection and Empowerment of Farmers

Number 19 of 2013; as well as its various derivative regulations. In its development, laws and regulations in agriculture were amended by Law Number 11 of 2020 concerning Job Creation (Job Creation Law). The Job Creation Law has changed various substantial provisions in laws and regulations in agriculture. When viewed from its substance, the Job Creation Law contains a controversial substance which impacts farmers' welfare. Before finally, the provisions of the Job Creation Law were declared conditionally unconstitutional by the Constitutional Court through Decision Number 91/PUU-XVIII/2020. The decision requires that the Job Creation Law be amended within 2 (two) years from the pronouncement of the decision [2].

The government has fulfilled the mandate of the Constitutional Court decision by issuing a Government Regulation instead of Law Number 2 of 2022 concerning Job Creation (Government Regulation instead of Law on Job Creation) [3]. However, the Government Regulation instead of Law on Job Creation (as stipulated into Law) has several problems such as the replacement of several substantial points and its formation is considered different from the formal rules of the formation of Government Regulations instead of Law. The dynamics of regulatory developments in agriculture with the issuance of Government Regulations instead of Law on Job Creation (as stipulated into law) will always impact laws and regulations in agriculture. Based on the description above, the researcher is interested in raising the title **"Juridical Review of Agricultural Sector Regulations in Law Number 6 of 2023 concerning the Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation."**


This study aims to answer two main questions: 1. How is the Establishment of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation as stipulated in Law Number 6 of 2023 related to the general principles of good governance?; and 2. What is the impact of the issuance of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation (as stipulated in Law) on laws and regulations in agriculture?

2. METHOD

The research method used in this study is normative juridical, emphasizing the study of the application of rules or norms in positive law [4]. This research uses descriptive-analytical research that describes the event or events being studied which is then analyzed based on existing facts in the form of secondary data obtained through primary legal materials and secondary legal materials [5]. The approach used in this study is a statutory approach and a comparative approach. The legislative approach is carried out by examining all laws and regulations relevant to the legal issues contained in the research [6]. The comparative approach is an approach that is done by comparing one rule with another [7]. The type of data used in this study is secondary data obtained from primary legal materials, secondary legal materials, and tertiary legal materials.

3. DISCUSSION

The Establishment of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation (as Stipulated into Law) is Associated with the General Principles of Good Government
As is known that on December 30, 2022, the government officially issued a Government Regulation instead of Law Number 2 of 2022 concerning Job Creation ("Government Regulation instead of the Job Creation Law") [8]. Based on information from Mahfud MD, this issuance is based on consideration of urgent circumstances to meet legal needs. If we turn back, the House of Representatives and the government have issued Law Number 11 of 2020 concerning Job Creation but was later declared conditionally unconstitutional by the Constitutional Court through Decision Number 91 / PUU-XVII / 2020. As a result, the government was ordered to suspend all strategic actions or policies that have a broad impact and form new implementing regulations from the Job Creation Law. The government must amend the Job Creation Law to meet the formal requirements within 2 (two) years. The Job Creation Law is declared invalid for all if it needs to be corrected. The reality today is that the steps taken by the government issue a Government Regulation in Lieu of the Law on Job Creation (as stipulated into law) rather than improving the Law as mandated by the Constitutional Court.



Jean Bodin stated that the state is a subject that bears rights and obligations and attaches to them the right and obligation to perform acts or legal deeds [9]. This statement is reinforced by Jellinek who states that state sovereignty is the core power anyone cannot possess [10]. This situation can be interpreted that the state is a party that holds the power to carry out actions or legal actions to achieve common goals. The constitution expressly mandates that sovereignty rests with the people and is exercised according to law. In this case, the law states that state institutions run the wheels of government. One thing that needs to be noted is that the implementation of the government must be based on legal principles. This is in line with the theory of administrative law as proposed by Maurice Hauriou which states that government actions and decisions must be in accordance with fair and proportional legal principles [11].

More specifically, government actions must always be based on the General Principles of Good Government as stated in Law Number 30 of 2014 concerning Government Administration as amended by Government Regulation instead of Law Number 2 of 2022 concerning Job Creation ("Government Administration Law"). The existence of this Law, which contains the General Principles of Good Government, is based on the need to remember the increasingly complex tasks of government and the absence of standard standards that make policy implementation not run properly [12]. The provisions of Article 10 of the Government Administration Law describe in detail the general principles of good governance: a. Legal certainty; b. Expediency; c. impartiality; d. Accuracy; e. Do not abuse authority; f. Openness; g. Public interest; and h. Good service. The principle of legal certainty is one of the General Principles of Good Government that the government must carry out in carrying out actions. Regarding the explanatory provisions of Article 10 letter a of the Government Administration Law, the principle of legal certainty is interpreted as a principle that prioritizes the basis for the provisions of laws and regulations, propriety, safety, and justice in every government administration policy. Gustav Radbruch said that legal certainty is certainty because of the law and certainty in or from the law [13]. The duty of the law in this case is to ensure the implementation of certainty due to law. Then certainty in or from the law is achieved if the law is as many laws as possible in the law does not contain conflicting provisions. Through this explanation, law is necessary to ensure legal certainty. Therefore, all policies formed by the government must always be based on a clear basis of legitimacy. The provisions of Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 state unequivocally that Indonesia is a state of law. The consequence of Indonesia's position as a state of law is that the government's actions as the holder of the people's mandate or the executor of state power must be based on law [14]. The exercise of state power, including the formation of laws and regulations, must also be based on legal rules governing the formation of laws and regulations.

Formally, the provisions regarding the rules for the formation of laws and regulations in Indonesia are contained in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as last amended by Law Number 13 of 2022 concerning the Establishment of Laws and Regulations ("Law on the Establishment of Laws and Regulations"). The provisions of the law regulate the procedures for which a law can be formed materially and formally, including the procedures for forming a Government Regulation in Lieu of Law. The provisions of Article 1 Number 4 of the Law on the Establishment of Laws and Regulations state that Government Regulations instead of Law are laws and regulations the President sets in case of a compelling emergency. The requirements for establishing a Government Regulation instead of Law are also regulated through the provisions of Article 22 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 which states that a Government Regulation instead of Law is determined if in the event of a compelling emergency. However, neither the provisions of the Law on the Establishment of Laws and Regulations nor the Constitution of the Republic of Indonesia Year 1945 regulate in detail the meaning of the compelling emergency. The meaning of this compelling emergency can be found in Constitutional Court Decision Number 138/PUU-VII/2009 which states that what is meant by force crunch is as follows: 1. there is a situation of urgent need to resolve legal problems expeditiously based on the law; 2. the required legislation does not yet exist so that there is a legal vacuum or there is a law but it is inadequate; and 3. The legal vacuum cannot be overcome by making laws in

the usual procedure because it will take a long time while the urgent situation requires certainty to be resolved immediately. The establishment of a Government Regulation instead of Law if reviewed is made on something other than force majeure, legal vacuum, or the need to make a law in a speedy procedure. The Job Creation Law that at that time existed was only in conditional unconstitutional status. The implication of conditional unconstitutionality means a law is declared invalid and has no binding legal force when the ordered conditions are unmet. This can be seen in the Constitutional Court Decision Number 91/PUU-XVII/2020 where the Constitutional Court declared the Job Creation Law unconstitutional conditionally which implicates an order for lawmakers to improve it from its formal aspect. The conditional unconstitutional declaration cannot necessarily be interpreted as a condition of legal uncertainty considering that its enforceability still exists. Thus, the Constitutional Court does not question the material aspects of the Job Creation Law. This can also be interpreted that there is no reason for the government to issue a Government Regulation instead of the Law on Job Creation (as stipulated into law) considering that the Constitutional Court only questions related to its formal aspects so that when the Job Creation Law has been amended, of course the Job Creation Law can be declared constitutional. Based on this basis, it can be said that the establishment of a Government Regulation instead of Law on Job Creation (as stipulated into Law) does not meet the principle of legal certainty considering the non-fulfillment of the requirements for the formation of a Government Regulation instead of Law as contained in Constitutional Court Decision Number 138 / PUU-VII / 2009.

Another General Principle of Good Government is the principle of prudence which means that a decision and action must be based on complete information and documents to support the legality of the determination and implementation of the decision and action so that the decision and action concerned is carefully prepared before the decision and action is determined and carried out. Regarding forming a Government Regulation instead of Law on Job Creation (as stipulated into Law) (as stipulated into Law), this principle still needs to be fulfilled by the government. This is based on existing considerations, namely the Constitutional Court Decision Number 91/PUU-XVII/2020 which clearly orders the government to correct the Job Creation Law which is considered formally flawed. The government prefers to issue a Government Regulation instead of the Law on Job Creation (as enacted into law) rather than amend the Job Creation Law. In this case, it can be said that the government needs to pay more attention to its actions in issuing a Government Regulation instead of Law on Job Creation (as stipulated into law). The government needs to remember the existence of a Constitutional Court Decision ordering the improvement of the Job Creation Law to fulfill legal certainty. The House of Representatives as the institution that has the authority to determine the stipulation of Government Regulations instead of Law into Law also makes matters worse by enacting Government Regulations instead of Law on Job Creation through Law Number 6 of 2023 concerning the Stipulation of Government Regulations instead of Law Number 2 of 2022 concerning Job Creation. Therefore, it can be concluded that forming a Government Regulation instead of Law on Job Creation (as stipulated into law) has contradicted the principle of prudence.

According to the provisions of Article 10 paragraph (1) of the Government Administration Law, the principle of not abusing authority is one of the General Principles of Good Government. The Explanatory Provisions of Article 10 paragraph (1) of the Government Administration Law explain that the principle of not abusing authority can be interpreted as a principle that requires every government body and official not to utilize their authority for personal or other interests and is not in accordance to grant such authority, does not exceed, does not abuse, and does not mix authority. Authority in this case also has a close relationship with an ownership of authority owned by an institution. Douglas J. Goodman reveals that authority is legitimized over rules issued by rulers and mutually agreed upon [15]. Max Weber also emphasized that the authority in the state is called rational legal authority, which applies in society. This means that state institutions in Indonesia, including the President, have rational legal authority contained in the rules (Constitution of the Republic of Indonesia Year 1945) formed by these state institutions and mutually agreed. As previously explained, the President has the authority to form Government Regulations instead of

Law which are legitimized through the provisions of Article 22 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945. When related to establishing a Government Regulation in Lieu of Law on Job Creation (as stipulated into Law), it is evident that establishing a Government Regulation in Lieu of Law is not based on the principle of not abusing authority. As already explained, the requirements for establishing a Government Regulation instead of Law that the Constitutional Court has stipulated still need to be fulfilled in the Government Regulation instead of Law on Job Creation (as stipulated into Law). Conditions like this can certainly be qualified as acts that abuse authority. The authority to form Government Regulations instead of Law is not carried out as well as possible, based on the purpose of granting authority to form Government Regulations instead of Law. This authority is used to achieve other interests, namely achieving the political interests of the framer of the law. Based on this basis, it can be said that establishing a Government Regulation instead of Law on Job Creation (as stipulated into law) is declared contrary to the principle of not abusing interests as contained in the General Principles of Good Governance. The provisions of Article 10 paragraph (1) point f of the Government Administration Law state that what is meant by the principle of openness is the principle that serves the public to gain access and obtain true, honest, and non-discriminatory information in government administration while considering the protection of personal rights, groups, and state secrets. The information in this context is related to establishing a Government Regulation instead of the Job Creation Law by the government. Normatively, the Constitution of the Republic of Indonesia Year 1945 and the Law on the Establishment of Laws and Regulations stipulate that the establishment of Government Regulations instead of Law becomes the authority of the President in matters of emergency. In its formation, Government Regulations instead of Law are not required to be made in advance Academic Manuscripts as a basis for studies of their formation which are assessed in philosophical, juridical, and sociological terms. Conditions like this have certainly eliminated community participation as a manifestation of the principle of openness. Moreover, as previously explained, there is no justification for forming a Government Regulation instead of Law on Job Creation (as stipulated into law) prepared in the form of a Government Regulation instead of Law considering that there is no indication of urgency as mandated by the Constitutional Court. Thus, it can be said that the government has taken advantage of existing legal loopholes by eliminating public participation to promulgate a Government Regulation instead of Law on Job Creation (as stipulated into law).

As is known that the establishment of a Government Regulation instead of Law on Job Creation (as stipulated into law) was formed using the *omnibus law* method. Audrey O'Brien argues that the *omnibus law* is a bill that includes various laws combined into one law [16]. The *omnibus law* method is commonly used by a country that applies a *common law* legal system. In this context, the Government Regulation instead of Law on Job Creation (as stipulated into law) applies the *omnibus law* method in its formation just like the Job Creation Law. The basis for the legitimacy of using this method can be found in Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Establishment of Laws and Regulations ("Law on the Establishment of Laws and Regulations"). The provisions of Article 64 paragraph (1) b of the Law on the Establishment of Laws and Regulations state that the *omnibus law* method is a method of drafting laws and regulations by containing new content material; change content material that has legal relevance and needs regulated in various laws and regulations of the same type and hierarchy; and repeal laws and regulations of the same type and hierarchy by combining them into one legislation to achieve certain goals. In essence, the Government Regulation instead of Law on Job Creation (as stipulated into Law) which uses the *omnibus law* approach method contains various cross-fields of law that differ. The similarity between the existing laws is the substance that changes the provisions of each previous law. The impact is that the Government Regulation instead of Law on Job Creation (as stipulated into law) which uses the *omnibus law* approach method does not contain systematics, but what exists is actually in the form of clustering. It is noted that the Government Regulation instead of Law on Job Creation (as stipulated into law) totals 1,117 pages. The large number of pages makes it difficult for people to read and understand them. This is

because the public is required to read two laws. Unlike the case with general change laws, which directly regulate existing changes. Regarding the general principles of good governance, establishing a Government Regulation instead of Law on Job Creation (as stipulated into law) using the *omnibus law approach method* is considered less representative of the principle of expediency. The benefits referred to in this case are related to formal benefits, namely accessibility to the law. Although it has substantial benefits, the community needs more benefits in the formal aspect considering that the community is quite difficult in terms of observing the law. EkawestriPrajwalitaWidiati stated that *the omnibus law* aims to increase the accessibility of laws and regulations [17]. However, the Government Regulation in Lieu of Law on Job Creation (as stipulated into law) does not reflect an increase in the accessibility of laws and regulations. Thus, the aims and objectives of simplifying regulations that have been determined will not be achieved by establishing a Government Regulation instead of Law on Job Creation (as stipulated into Law) that uses the omnibus law approach.

The Impact of the Issuance of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation (as Stipulated into Law) on Laws and Regulations in the Agricultural Sector

Food is the need of every human being to survive. Therefore, food availability must always be maintained. States must ensure that food availability can be fulfilled for all communities. In line with that, efforts to meet food availability are also carried out in several ways, one of which is the formation of regulations. Roscoe Pound revealed that law functions as a means to social engineering. In this case, the context of social engineering can refer to the arrangement of arrangements in agriculture to achieve food fulfillment. Furthermore, law as a social engineering tool is interpreted as a step to realize harmony and harmony to meet human needs and interests in society [16]. The needs referred to in this case are the needs in fulfilling food. Concretely, the fulfillment of these needs has been accommodated through various laws and regulations in agriculture. Broadly speaking, the arrangement leads to one goal: achieving community welfare through food delivery. The implementation of food is carried out to meet basic human needs that provide benefits fairly, equitably, and sustainably based on food sovereignty, food independence, and food security.

It is noted that the agricultural sector is regulated in the provisions of Law Number 18 of 2012 concerning Food, Law Number 19 of 2013 concerning the Protection and Empowerment of Farmers, and Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land. Regulations in agriculture in the provisions of these laws and regulations are recorded to have changed simultaneously through Law Number 11 of 2020 concerning Job Creation. These changes have an impact on the welfare of farmers because food import policies are being relaxed. When the volume of food imports increases, it does not rule out the possibility that this impacts the sales of domestic food products sold by farmers.

As is known that the government issued a Government Regulation instead of Law Number 2 of 2022 concerning Job Creation as stipulated in the Job Creation Law ("Job Creation Law"). The Job Creation Law is recorded to change a number of regulatory substances scattered in various laws and regulations including the regulation of the agricultural sector. If described, the changes in question can be seen as follows:

- a. The provisions of Article 64 Number 1 of the Job Creation Law which amends the provisions of Article 1 Number 7 of Law Number 18 of 2012 concerning Food ("Food Law")

Before the change:

Food Availability is the condition of food availability from domestic production and national food reserves and imports if the two main sources cannot meet the needs.

After the change:

Food Availability is the condition of food availability from domestic production, national food reserves, and food imports.

Based on the comparison between the two provisions of the Article, it can be seen that there are changes in the provisions on food imports. In the provisions of the Article before the amendment,

food imports are accompanied by a phrase stating the conditions when the main food source, namely domestic products and national food reserves, is not met. Meanwhile, the provisions of the Article after the amendment no longer contain conditions for the fulfillment of domestic products and national food reserves. These changes impact the potential decline in domestic production efforts and the tendency of policies that prioritize import products.

b. The provisions of Article 64 Number 2 of the Job Creation Law which amend the provisions of Article 14 of the Food Law

Before it was changed:

- 1) *Food supply sources come from domestic food production and national food reserves.*
- 2) *If the source of food supply as referred to in paragraph (1) needs to be increased, food can be fulfilled by food imports as needed.*

Once modified:

- 1) *Food supply sources are prioritized from:*
 - a. *Domestic Food Production;*
 - b. *National Food Reserves; and*
 - c. *Import.*
- 2) *Food supply sources as referred to in paragraph (1) are carried out by considering the interests of farmers, fishermen, fish farmers, and micro and small food business actors through tariff and non-tariff policies.*

Based on the comparison between the two provisions of the Article, it can be seen that there are changes that lie in the position of food imports. Before it was changed, the provisions regarding imports served as a last resort when other sources of supply were not met. Meanwhile, after being amended, import provisions are now positioned as a last alternative. Thus, it can be said that to carry out imports no longer review the state of limited sources of domestic food supply and domestic reserves.

1. The provisions of Article 64 Number 3 of the Job Creation Law which amend the provisions of Article 15 of the Food Law

Before it was changed:

1. *The government prioritizes domestic food production to meet food consumption needs.*
2. *If Food Availability for consumption needs and Food reserves are sufficient, excess domestic Food Production can be used for other purposes.*

Once modified:

1. *Domestic food production is used to meet food consumption needs.*
2. *If Food Availability for consumption needs and Food reserves are sufficient, excess domestic Food Production can be used for other purposes.*

Based on the comparison between the two Articles, it can be seen that there is a change in the word "precedence" which has been omitted in the provisions of the new Article. This indicates that domestic food products are no longer prioritized by the government, thus opening up opportunities for food import policies to be used as the main source of food fulfillment.

c. The provisions of Article 64 Number 4 of the Job Creation Law which amend the provisions of Article 36 of the Food Law

Before it is changed:

- 1) *Food imports can only be carried out if domestic food production is insufficient and cannot be produced domestically.*
- 2) *Imports of Basic Food can only be carried out if domestic Food Production and National Food Reserves are insufficient.*
- 3) *The adequacy of domestic staple food production and government food reserves is determined by ministers or government agencies that carry out government duties in the food sector.*

Once modified:

- 1) *Food imports are carried out to meet domestic needs.*

2) *Imports of staple foods are carried out to meet the needs of national food consumption and reserves.*

3) *Food Imports and Basic Food Imports as referred to in paragraph (1) and paragraph (2) are determined by the Central Government by taking into account the interests of Farmers, Fishermen, Fish Farmers, and Micro and Small Food Business Actors.*

Based on the comparison between the two articles, it can be seen that there is an elimination of food import requirements, namely if domestic products are insufficient and cannot be produced domestically. This can be interpreted that the government can only import food with paying attention to the adequacy of domestic products.

d. The provisions of Article 64 Number 5 of the Job Creation Law which amend the provisions of Article 39 of the Food Law

Before it was changed:

The government establishes Food Import policies and regulations that do not hurt the sustainability of agricultural businesses, increased production, the welfare of farmers, fishermen, fish farmers, and micro and small food business actors.

Once modified:

The Central Government establishes policies and regulations on Food Import in the context of agricultural business sustainability, improving the welfare of farmers, fishermen, fish farmers, and micro and small food business actors.

Based on the comparison between the two Articles, it can be seen that the phrase "which does not have a negative impact" is omitted on the establishment of food import policies and regulations. If interpreted a *contrario*, this can trigger a food import policy that can hurt the sustainability of farmers' businesses. Another comparison is that it can be seen that there is a change in authority previously carried out by the Government to the Central Government. This can be interpreted as a policy of centralizing food imports by the central government to eliminate the authority for local governments in dealing with food import policies. Based on Article 22D paragraph (1) of the Constitution of the Republic of Indonesia Year 1945, the Regional Representative Council has the authority to participate in discussing draft laws relating to regional autonomy. However, the Regional Representative Council needs the authority to discuss the substance related to regional autonomy in the Government Regulation instead of Law on Job Creation (as stipulated into law) considering that the President unilaterally forms the Government Regulation instead of Law. In enacting a Government Regulation instead of Law on Job Creation into Law, the Regional Representative Council is separate from discussing and approving the enactment of a Government Regulation instead of Law on Job Creation into Law. This is because when referring to the provisions of Article 52 of Law Number 12 of 2011 concerning the Establishment of Laws and Regulations as last amended by Law Number 13 of 2022, it is stated that only the institution of the House of Representatives has the authority to approve the enactment of Government Regulations instead of Law into law. With a Government Regulation instead of Law on Job Creation (as stipulated into Law), it can be seen that the Government uses existing legal loopholes to eliminate regional authority in determining food import policies. This can also be interpreted as an effort to eliminate the excess authority of the Regional Representative Council as a regional community representative institution. Conditions like this can also be indirectly interpreted as eliminating public participation or contrary to the principle of openness in forming laws and regulations.

e. The provisions of Article 32 Number 1 of the Job Creation Law which amend the provisions of Article 15 of Law Number 19 of 2013 concerning the Protection and Empowerment of Farmers (Law on the Protection and Empowerment of Farmers)

Before it was changed:

1) *The government must prioritize domestic agricultural production to meet national food needs.*

2) *The obligation to prioritize domestic agricultural production as referred to in paragraph (1) is carried out through regulation of imports of agricultural commodities in accordance with the harvest season and domestic consumption needs.*

3) *Regarding imports of Agricultural Commodities, the relevant minister must coordinate with the Minister.*

Once modified:

1) *The Central Government and Local Government, according to their authority, are obliged to increase agricultural production.*

2) *The obligation to increase domestic agricultural production as referred to in paragraph (1) is carried out through the Farmer protection strategy as referred to in Article 7 paragraph (2).*

Based on the comparison between the two articles, it can be seen that there is a change regarding the obligation of the government which originally had the obligation to prioritize domestic food production to the obligation to increase agricultural production. In this case, it can be said that the fulfillment of domestic food needs no longer prioritizes domestic food products. The most important thing is how domestic food needs can be achieved even though it is done through food import policies with no restrictions.

f. The provisions of Article 32 Number 2 of the Job Creation Law which amend the provisions of Article 30 of the Law on the Protection and Empowerment of Farmers

Before it was changed:

1) *Everyone is prohibited from importing Agricultural Commodities when the availability of domestic Agricultural Commodities is sufficient for the Government's consumption needs and food reserves.*

2) *The Minister shall determine the adequacy of the Government's consumption needs and food reserves as referred to in paragraph (1).*

Once modified:

1) *The adequacy of the Government's consumption needs and food reserves comes from domestic production and imports while protecting the interests of farmers.*

2) *Imports of agricultural commodities as referred to in paragraph (1) are carried out in accordance with trading instruments based on the provisions of laws and regulations.*

3) *The adequacy of the Government's consumption needs and food reserves as referred to in paragraph (1) is determined by the Central Government.*

Based on the comparison between the two articles, it can be seen that there is a removal of the prohibition on importing agricultural commodities when consumption needs and national food reserves have been met. From these changes, it is increasingly evident that the government is increasingly relaxing food import policies.

g. The provisions of Article 124 Number 1 of the Job Creation Law which amend the provisions of Article 44 paragraph (2) of Law Number 41 of 2009 concerning the Protection of Sustainable Food Agricultural Land.

Before it was changed:

In the case of public interest, Sustainable Food Agricultural Land as referred to in paragraph (1) can be converted, and implemented in accordance with the provisions of laws and regulations.

Once modified:

In the case of public interest and National Strategic Projects, Sustainable Food Agricultural Land as referred to in paragraph (1) may be converted and implemented in accordance with the provisions of laws and regulations.

Based on the comparison between the two articles, it can be seen that there are additional conditions to carry out land conversion, namely when carried out in the context of implementing national strategy projects. National strategy projects as referred to in the provisions of Article 1 Number 1 of Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning the Acceleration of the Implementation of National Strategic Projects are projects and programs implemented by the Government, Regional Governments, and business entities that have a strategic nature to increase growth and equitable development to improve community welfare and development area. The emergence of the requirements for this national strategy project is feared that there will be abuse of authority to improve community welfare and regional development.

Based on the description of changes in laws and regulations in agriculture contained in the Job Creation Law, it can be stated that these changes significantly impact society, especially farmers. The welfare state theory states that the government has an important role in creating social welfare for its people [17]. The government must actively manage the economy to achieve social welfare goals [18]. This means that the economic management referred to in this case is reflected in the food administration policy regulated in the provisions of laws and regulations. The Job Creation Law does not reflect the social welfare in question. The welfare of farmers as domestic product producers is threatened by food import policies that no longer have restrictions.


The law is present for society to achieve a certain goal. The regulatory and coercive power the law possesses is always used to achieve this goal. Gustav Radbruch stated that law has three basic legal values to achieve: justice, legal certainty, and legal expediency. Legal expediency means a rule based on the usefulness and benefits of the law for society [19]. Radbruch emphasized that the law must be able to improve welfare and benefit for the community. In *contrario*, the Government Regulation instead of the Job Creation Law does not describe the legal benefits referred to by Gustav Radbruch considering that the changes that exist, especially related to regulations in agriculture, are unable to achieve welfare for the community, especially the context in this case is people who work as farmers.

4. Conclusion

Based on the discussion above, it can be concluded that the establishment of a Government Regulation instead of Law on Job Creation (as stipulated into law) is not by the general principles of good governance, namely the principle of legal certainty, the principle of prudence, the principle of not abusing authority and the principle of openness. This can be seen in the procedures for the formation of Government Regulations instead of Law on Job Creation (as stipulated in Law) which are not based on the provisions of existing guidelines such as guidelines for the formation of Government Regulations instead of Law as contained in the provisions of Constitutional Court Decision Number 138 / PUU-VII / 2009. The President ignores the provisions of the Government Regulation instead of the Law. The aims and objectives of establishing a Government Regulation instead of Law also need to reflect public interest goals to be achieved, but political interests. In addition, establishing a Government Regulation in Lieu of Law on Job Creation (as stipulated into law) using the omnibus law approach method is considered less representative of the principle of expediency in terms of formal aspects. The changes contained in the Government Regulation instead of Law on Job Creation (as stipulated into law) also impact the community's welfare, especially people who work as farmers. This is because these changes lead to the easing of food import policies which can potentially reduce the selling value of domestic food production produced by domestic farmers. This condition makes the existence of a Government Regulation instead of Law on Job Creation (as stipulated into law) considered to have distorted the value of legal expediency and the purpose of the welfare state. The author advises the government to pay attention to the general principles of good governance in forming a Government Regulation instead of Law. The author also suggests that the government always review the substances of the rules that have been changed in the agricultural sector so that it can better direct efforts to prosper farmers and review the use of the omnibus law approach method to change the substance of various laws into one law.

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